

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the)
Telecommunications Act of 1996:)

Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other)
Customer Information)

CC Docket No. 96-115

**COMMENTS OF SBC COMMUNICATIONS INC. IN SUPPORT OF THE
PETITION FOR TEMPORARY FORBEARANCE OR STAY OF GTE SERVICE
CORPORATION, AND THE REQUEST FOR DEFERRAL AND CLARIFICATION
OF CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION;
AND PETITION FOR TEMPORARY FORBEARANCE OR DEFERRAL OF
SBC COMMUNICATIONS INC.**

**ROBERT M. LYNCH
DURWARD D. DUPRE
MICHAEL J. ZPEVAK
ROBERT J. GRYZMALA**

**Attorneys for
SBC Communications Inc.**

**One Bell Center, Room 3532
St. Louis, MO 63101
(314) 235-2515**

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SUMMARY

SBC firmly believes that the FCC would be providing a great service to the consumers and the telecommunications industry by temporarily forbearing from applying, or deferring the effective date of, certain portions of the CPNI Order and rules, for 180 days, with respect to the collective relief sought by GTE, CTIA, and SBC. Further, as the FCC held in its CPNI Order, since Section 222 applies to all telecommunications carriers, all such relief should be extended to both the wireless and wireline contexts.

Additionally, SBC requests the Commission to extend GTE's Petition and CTIA's Request in one limited but important respect -- to encompass temporary forbearance and/or deferral of the effective date of the CPNI Order and rules with respect to Caller ID/Call Waiting-related display devices and compatible telephone units.

The Commission should temporarily forbear from or defer Rule 64.2005(b)(3) relating to the use of CPNI for carrier "winback" efforts in both the wireless and wireline context. The Commission should also clarify that the CPNI Order and rules do not apply to "retention" efforts. Alternatively, the Commission should temporarily forbear from applying, or defer the effective date, of the CPNI Order in this regard, to the extent the Commission interprets it to bar the use of CPNI for retention efforts.

Finally, the Commission should clarify that the definition of CPNI does not include a customer's mere name and address.

SBC believes the Commission needs a more comprehensive record regarding the issue of

* All abbreviations used herein are referenced within the text.

use of CPNI for marketing CPE and information services. The 180 day deferral requested by CTIA (in which SBC joins) would provide the Commission with adequate time to create a record that will allow a more “consumer-friendly” yet “privacy-sensitive” approach to the important issues addressed in the instant petitions. Just as importantly, customer confusion and frustration over the new CPNI regime must be avoided. A forbearance or deferral period of 180 days would best serve this end.

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SBC COMMUNICATIONS, INC.**

SBC Communications Inc. ("SBC"), on behalf of itself and each of its affiliates, hereby files these comments regarding two separate requests for relief in connection with the Commission's CPNI Order published on April 24, 1998:¹ the Petition for Temporary Forbearance or, In the Alternative, Motion for Stay ("Petition") filed by GTE Service Corporation ("GTE"); and the Request for Deferral and Clarification ("Request") filed by the Cellular Telecommunications Industry Association ("CTIA").

¹Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Second Report and Order, released February 26, 1998, FCC 98-27 ("CPNI Order").

I. INTRODUCTION

By these Comments, SBC expresses its full support for the specific relief sought both by GTE's Petition and CTIA's Request. SBC agrees with the reasons submitted in support of the Petition and Request in all material respects. SBC also specifically requests that to the extent that the Commission may grant any relief as a result of either GTE's Petition or CTIA's Request, the same relief should be extended to all telecommunications carriers, whether wireless or wireline, without regard to the manner in which the services and products referred to in the Petition or Request are offered. SBC further submits that any such relief should extend for a full 180-day period beyond May 26, the currently-scheduled effective date of the CPNI Order and rules.

In addition, SBC also believes that the Commission should extend GTE's Petition and CTIA's Request in one limited respect -- to encompass temporary forbearance and/or deferral of the effective date of the CPNI Order and rules, for a period of 180 days, with respect to Caller ID/Call Waiting-associated display devices and compatible telephone units -- and SBC so moves (hereinafter "SBC's Petition/Request"). SBC believes that the CPNI Order reached erroneous conclusions with respect to CPNI use in connection with CPE and enhanced/information services generally. SBC does not take this opportunity to squarely address each of the grounds for its opinion in this regard. Rather, SBC's own Petition/Request merely asks that the effective date of these aspects of the CPNI Order and rules be temporarily postponed until full consideration of their impacts may be fully analyzed in the limited Caller ID/Call Waiting-related contexts.

II. THE COMMISSION SHOULD FORBEAR FROM APPLYING, OR DEFER THE EFFECTIVE DATE OF, SECTION 64.2005(b)(1) OF THE RULES IN CONNECTION WITH THE PROVISION OF CPE AND INFORMATION SERVICES FOR CMRS.

Both CTIA and GTE, and SBC herein, fully explain the intricate interrelationship between CMRS and the CPE used in connection with that service. New Section 64.2005(b)(1) of the rules, which prohibits a telecommunications carrier from using CPNI for the provision of CPE, without customer approval, flatly conflicts with CMRS technology, CMRS policy advocated by the Commission, the established marketing practices of CMRS carriers and consumer expectations.

The handset for wireless service is a radio transmitter, which is tied to the service, operates under the authority granted to the carrier,² and is network-specific; it must be compatible in frequency and modulation with the CMRS to which the customer subscribes and must be programmed specifically for the specific carrier's service. If, for example, a customer who has analog cellular service chooses to switch to digital service, the customer must turn in his or her analog handset and obtain digital CPE.³ Likewise, many times the CPE in a market will be unique to a particular carrier and will not work on a competing carrier's network due to differences in the technology or spectrum (PCS vs. cellular vs. SMR) wherein the carrier is assigned. For example, in St. Louis the following carriers are competing:

² See, e.g. 47 C.F.R. 22.927.

³ CTIA, p. 16; GTE, pp. 9-10.

<u>Carrier</u>	<u>Type</u>	<u>Digital Technology</u>
SWB Wireless	Cellular	TDMA
Ameritech	Cellular	CDMA
Sprint PCS	PCS	CDMA
AT&T	PCS	TDMA
Nextel	SMR	IDEN

Thus, generally the distributors of the CPE will also be selling the particular carrier's services.

With regard to CMRS, the CPE and service are so integrated, customers expect to obtain CPE when they subscribe to CMRS. In fact, to fully serve the customer and avoid customer confusion, CMRS carriers offer new customers CPE along with the service which assures that the CPE is compatible with the service obtained and is correctly programmed. CMRS and the CPE that makes the service work are interrelated in customers' minds; to the customer the CPE is part of the service. The Commission has recognized that wireless operations in general have subsidized the cost of the phones to build a customer base and noted that service providers in many markets "as part of service offerings" offer phones for as little as a penny.⁴

Due to the interrelationship of CPE and service, the Commission's new Section 64.2005(b)(1) presents serious obstacles to CMRS providers to the detriment of the public. The problems presented are best demonstrated by the debilitating effect of the

⁴ Report of the Federal Communications Commission, Second Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, p. 53 (Released March 25, 1997). (Second Annual CMS Competition Report).

rule on the efforts of CMRS providers to migrate analog customers to digital service. Digital technology improves capacity because multiple voice paths can be used on a single channel, whereas with analog each channel supports one voice path. Thus, migration of high use customers to digital improves capacity for all customers. As the Commission has stated "digital technology greatly increases the range, quality and quantity of services that CMRS providers can offer to subscribers."⁵ Thus, the Commission has encouraged CMRS carriers to invest in spectrum-efficient digital technologies and to build out digital systems.⁶ SBC Wireless is in the process of doing just that. In conjunction with digital build-out, SBC Wireless is actively marketing digital service to its high-volume analog customers, on the basis that high-volume customers are the best candidates for digital service and the migration of such customers will result in maximum reduction of system blockage. Obviously, to identify these customers, SBC Wireless must view customer accounts and use CPNI.

The use of CPNI is permitted to inform customers of the enhancements available for their existing service through digital. The problem arises in that to gain the benefits of digital, the customer must have a digital handset. Existing analog handsets will not provide the benefits of digital service -- thus the customer wanting to take advantage of the benefits of digital must acquire a new handset. Section 64.2005(b)(1) allows the use of CPNI to determine primary candidates for digital but apparently seemingly prohibits

⁵ Second Annual CMS Competition Report, p. 7.

⁶ CTIA, p. 19.

the carrier from including the required digital CPE in marketing the service. To market the digital service and exalt its benefits without mentioning that the service requires a digital phone would be misleading, confusing, inconsistent with customer expectations and contrary to the public interest. To merely state that a digital handset is required without information regarding how one can be obtained, or a price point, is likely to make the success rate of the marketing effort nil. Preventing the mentioning of the availability of the required handset also precludes carriers from subsidizing the cost of the digital handset to motivate the customer on high usage rate plans to go digital. A carrier may be willing to subsidize the price of a digital handset to a high end user in order to gain capacity in the network -- capacity that would not necessarily be gained by a customer going digital who uses the service rarely or for emergencies only. Likewise, the carrier may not be willing to offer the same discounts on the digital handsets on low end rate plans because such plans being digital does not provide the same benefit in maximizing network capacity.

PCS competitors are touting digital quality and features and subsidizing handsets on high end rate plans to attract new customers. Prohibiting existing carriers from communicating competing packaged digital offers to existing customers who are on similar high volume analog rate plans puts such carriers at a competitive disadvantage. The public is better served by allowing the free communication of such competitive offers.

Likewise, PCS carriers are interested in determining who their high volume users are because they are primary candidates for the marketing of dual mode phones -- phone

that will work on the PCS network or, if not available, the analog cellular network via roaming. PCS carriers want to provide their customers with the best service possible and, given the high rate of churn, do not want to lose a converted cellular customer back to cellular because of coverage issues. Thus, by identifying high users and offering or possibly even subsidizing the cost of the handset, the PCS carrier is providing the customer with improved service and mitigating the possibility that the customer will leave because of coverage issues.

The existing close integration of mobile service and CPE stems from the Commission's long-standing decision to permit the bundling of CMRS and CPE. CTIA notes that the Commission, the Department of Justice and the Federal Trade Commission all have concluded that bundling of CMRS and CPE meets consumer expectations and actually benefits consumers.⁷ Inasmuch as consumers have come to expect CPE as part of their total service offering of CMRS, consumer privacy interests are not compromised by allowing the use of CPNI to provide CPE, along with the CMRS.

Just as the handset is fully integrated with CMRS, services related to mobile service, such as voice mail and messaging services, are an integral part of CMRS. CMRS carriers market voice mail and messaging along with the underlying mobile service. For example, an important part of SBC's promotion of digital service is informing the consumer of the "advanced PCS features" that are included in the digital service, such as voice mail, paging and messaging. Consumers view such features as essential

⁷ CTIA, pp. 18-19.

components of their mobile service and expect CMRS carriers to offer the features as part of the overall service. As GTE notes, voice mail and short message services provide essential functions for CMRS customers, since their phones may be unreachable due to being turned off to conserve the battery, or because of network blockage or poor radio reception.⁸ Further, these are the features that the new incumbent PCS providers are touting in an effort to win the incumbent cellular customers. The inclusion of such features in an offer to existing high user customers is necessary for the customer to make an informed decision regarding how his incumbent carrier's service compares to the new entrant's digital offers.

Rule 64.2005(b)(1) would prohibit CMRS carriers from using CPNI, without customer approval, to provide information services, which includes such services as voice mail and messaging. As is the case with CPE, this prohibition conflicts with the established marketing practices of CMRS carriers and the expectations of consumers. Information services are an integral part of CMRS. Carriers market and consumers expect to obtain the entire service package -- the service, CPE and features such as voice mail and messaging. The rule creates an artificial distinction that prohibits the CMRS carrier from using CPNI to inform customers of the service and corresponding features that would optimally meet the customer's needs. The rule would result in inefficiency and customer confusion, while protecting no privacy interest of the consumer.

⁸ GTE, pp. 20-21.

SBC also agrees with GTE that carrier-provided voice mail and wireless short message service are an integral part of CMRS.⁹ As GTE notes, CMRS is characterized by factors like the dependency on battery life and the susceptibility of radio-based services to propagation affecting phenomena, which increase the reliance of customers on services such as voice mail and short message paging. Such services are an integral part of CMRS and should not be deemed separate services.

SBC urges the Commission either to forbear from application of Rule 64.2005(b)(1) or defer the effective date of the rule with regard to CMRS providers. Either action will permit the development of an adequate record, which presently contains no evidence about CMRS that would permit the Commission to define "CMRS" and customers' "existing service relationship" with their CMRS carriers to exclude wireless CPE and information services. In view of the significant impact this rule would have on consumers and on the CMRS industry, the Commission should permit the development of a full and complete record prior to the effectiveness of the rule. Based on such a record, the Commission can then act on petitions to reconsider the rule or forbear from applying it.

III. THE COMMISSION SHOULD TEMPORARILY FORBEAR FROM APPLYING, OR DEFER THE EFFECTIVE DATE OF, SECTION 64.2005(b)(1) OF THE RULES IN CONNECTION WITH THE PROVISION OF WIRELINE VOICE MAIL SERVICES.

While the CPNI Order did not distinguish among various kinds of information services, whether in the wireless or wireline contexts, particular analysis should have

⁹GTE, pp. 20-22.

been devoted to wireline voice mail and related voice messaging storage and retrieval services ("voice mail services"). The Commission should temporarily forbear from applying, or should defer the effective date of, Rule 64.2005(b)(1) with respect to the use of CPNI in connection with the provision of wireline voice mail services, in light of the unique relationship between these specialized information services and "in the bucket" wireline telecommunications services for reasons both similar to and in addition to those applicable to the wireless context.¹⁰

Voice mail services serve an increasingly indispensable "call control" function in today's often hurried business and family environments. They allow a customer who, at the time when a call is placed to him or her, either does not wish to or cannot answer the telephone. In such instances, the customer can still count on receiving the message at a later time (i.e., by "retrieving" the "stored" message).

If the customer is away from the telephone, but subscribes to the tariffed adjunct-to-basic-service Call Forwarding/Don't Answer, the telephone caller's message is

¹⁰SBC emphasizes, however, that the capability of voice mail services to store and retrieve messages squarely places these services within the "information services" category for purposes of the Act. As such, voice mail services cannot also be "telecommunications services." For this reason, and others stated elsewhere, SBC completely agrees with GTE's position that "[w]hile forbearance from Section 222 regulation is wholly appropriate based upon customer expectations and within the Commission's Section 10 discretion, this does not mean that the Commission has authority to extend Section 251 regulation to information services," GTE Petition, pp. 19-20, n. 27, or, specifically, that it has authority to require that voice mail services be made available for resale under Section 251 of the Act. *See*, Petition of Telecommunications Resellers Association for a Declaratory Ruling That Voice Mail Services Are Telecommunications Services That Must Be Made Available for Resale at Wholesale Rates Pursuant to Section 251(c)(4) of the Communications Act, as Amended, CCB/CPD 98-16, Comments of SBC Communications Inc., filed April 21, 1998, Reply Comments of SBC Communications Inc., filed May 12, 1998.

forwarded to a voice mail platform for storage and later retrieval. And, if a customer is on the telephone, but subscribes to Call Forwarding/Busy Line, another adjunct-to-basic service, the incoming message may be stored and retrieved in the same manner. In such a case, there is no interruption to the original conversation. In both cases, the voice mail service, working in combination with tariffed services, provides important call control and convenience functions.

In busy households and businesses, voice mail services work well in conjunction with Call Waiting, another adjunct-to-basic service. These services, working in combination with one another, allow the called party an additional call control choice -- whether to discontinue the conversation in progress and take the incoming call at that time, or to continue the conversation in progress and allow the incoming message to "go to voice mail" for later retrieval.

Further, to the extent that the called party not engaged in conversation but present at the called location subscribes to Caller ID service (and has a required display device), and also purchases voice mail services, additional and even more informed call control choices are presented. He or she can identify the caller from viewing the caller's name and/or telephone number, and then decide whether to answer the telephone or let the caller "go to voice mail." If the called party is already engaged in conversation, technology may soon permit (where not offered already) the called party to view the caller's name and/or number "real time" while the original call remains in progress, and to decide whether to take the incoming call (via Call Waiting) or retrieve the second caller's message later.

The collective capabilities of Call Forwarding, Call Forwarding/Don't Answer, Call Forwarding/Busy Line, Call Forwarding/Busy Line/Don't Answer, Call Waiting, Caller ID and Voice Mail services offer customers vast control over how and when to receive incoming telephone calls. They also present an economic "cost benefit/cost avoidance" decision and a social decision for consumers, that is, for example, whether to invest in an additional telephone line, or to subscribe to tariffed adjunct-to-basic services and purchase voice mail as a package, which may be a functionally acceptable "substitute" based on their own needs and desires. SBC assures the Commission that, in its experience, no customer makes such decisions based on the fact that voice mail is an information service, but that the other services are not.

SBC agrees that the CPNI Order reasonably concluded that these various adjunct-to-basic services are necessary to, or used in the provision of, telecommunications service for purposes of 222(c)(1)(B) of the Act. However, nowhere did the Commission provide any reasonable basis on which to distinguish voice mail and related services from adjunct-to-basic services for Section 222 purposes. As shown above, voice mail and these several other services work in tandem with one another and afford the customer different, yet all-important control over their telephone service.

An immediate effective date regarding that aspect of the Commission's CPNI Order that requires customer approval to use CPNI to market, sell and provide voice mail services, but not these other complementary services would adversely affect customers. Given the customer's perceptions about these related services, it would be confusing and perplexing were customers to be asked to decide whether SBC can use their CPNI to

provide them voice mail services, for this request would come in a circumstance they would not anticipate nor understand. Such confusion and frustration would be compounded were they asked to provide CPNI approval in the voice mail context, but need not be asked in the telecommunications service (adjunct-to-basic service) context.

Consequently, the Commission should temporarily forbear from applying, or defer the effective date of, Rule 64.2005(b)(1), for a period of 180 days.

IV. THE COMMISSION SHOULD TEMPORARILY FORBEAR FROM APPLYING, OR DEFER THE EFFECTIVE DATE OF, SECTION 64.2005(b)(1) OF THE RULE WITH RESPECT TO CPE USED IN CONNECTION WITH CALLER ID, CALL WAITING AND ADSL SERVICES.

The CPNI Order rationally concluded that customers do not expect that carriers will need their approval to use CPNI for offerings within the existing "total service" to which they subscribe. As the Commission noted, "[w]e find no reason to believe that customers would expect or desire their carrier to maintain internal divisions among the different components of their service, particularly where such CPNI use could improve the carrier's provision of the customer's existing service."¹¹

As is apparent from Part III., above, customers view and use Caller ID and Call Waiting services as important parts of their total service. Notwithstanding this, the CPNI Order requires approval for the use of CPNI to market the Caller ID display device (which is CPE), and the Call Waiting-related telephone units (which are also CPE), but no approval is needed to use wireless or local exchange wireline telecommunications

¹¹CPNI Order, ¶55.

CPNI within these respective service category "buckets" in order to market, sell and provide Caller ID or Call Waiting services themselves. That result is inconsistent with the Commission's findings regarding customers' expectations and is not compelled by Section 222.

Similar considerations (in addition to those pointed out by GTE) apply to CPE associated with Asynchronous Digital Subscriber Loop service ("ADSL") Thus, SBC respectfully petitions the Commission to temporarily forbear from applying, or to defer the effective date of, Rule 64.2005(b)(1) in these limited contexts so that its effects upon the offering of the telecommunications services necessarily involved can be better identified and weighed.

Caller ID:

As the Commission and Congress are well aware, consumers desire "one-stop shopping." In the Caller ID context, customers routinely view both Caller ID service and the display device as necessary components of an integrated service that they may secure from a single point of contact. However, the requirement in the CPNI Order that no CPNI be used without customer approval to market CPE serves only to confuse customers and to defeat their expectation that both components of Caller ID may be conveniently packaged together.

The CPNI Order places carriers in an unenviable Catch 22. In order to cost-effectively market Caller ID service, targeted marketing is essential. To a limited degree, it can reasonably be done without CPNI implications (i.e. Caller ID is within wireless and local service categories). However, even though Caller ID service cannot work without

the display device, sales personnel may not be able to discuss CPE without appropriate CPNI approval. On the other hand, if a customer is not targeted at all, but is interested in Caller ID, no CPNI approval implications are presented with respect to the service. Yet, there remains the problem of discussing the display device absent the customer's approval to use CPNI.

Thus, while a carrier can discuss the need for equipment (and, pursuant to various state laws, generally are required to do so), it appears that that same carrier may not be able to offer the device without appropriate CPNI approvals. The solicitation of such approval (as well as the notification process, as applicable) are processes which are foreign to the customer and detract from the carrier's ability to present an informed, fully-considered and comprehensive sales approach from the outset. And, given that Caller ID and the display device are viewed as but one component of a customer's "total service," customers will be thoroughly inconvenienced, if not surprised, by the carrier's solicitation of approval to use CPNI in these circumstances.

This is particularly unfortunate given that the Commission specifically concluded in the CPNI Order that services such as Caller ID would fall squarely within the language of Section 222(c)(1)(B) and, therefore, that carriers would not need to obtain express approval from the customer to use CPNI to market those services.¹² However, carriers cannot exercise their statutory right to use CPNI to market Caller ID service in any practicable way given that the Rule 64.2005(b)(1) would require CPNI approval to be

¹²*Id.* ¶73.

obtained to offer the customer the display device without which the service is useless. Thus, the rule would directly and adversely impact not only CPE, but also carrier rights and customer expectations under Section 222(c)(1) that no CPNI approval is needed to market Caller ID service, a "within the bucket" service.

SBC understands that the Commission's anti-bundling rule requires that the display device be offered "separate and distinct from" Caller ID service.¹³ Thus, for example, discounted CPE may not be conditioned upon the purchase of tariff services under present law.¹⁴ However, notwithstanding the anti-bundling rule, carriers have for several years now been fully permitted to utilize the same marketing and sales personnel to sell both transmission services and CPE, and have been able to "package" such services so long as consistent with the anti-bundling rule.

Application of the rule to Caller ID display devices would create other internal inconsistencies in the CPNI Order. For example, the Commission ruled that carriers may use without customer approval CPNI derived from wireline service for the provision of inside wiring installation, maintenance, and repair services.¹⁵ It agreed with U S WEST's observation that "inside wiring has little purpose beyond physically connecting the

¹³47 C.F.R. §64.702(e).

¹⁴US Sprint Communications Company, Limited Partnership, v. AT&T Communications, File No. E-89-277, Memorandum Opinion and Order, released November 8, 1993 (DA 93-1312), ¶9.

¹⁵CPNI Order, ¶79.

telephone transmission path.”¹⁶ The Caller ID display device offers a more compelling case in this regard, as it has no purpose beyond physically connecting the Caller ID tariffed transmission service.

The Commission also agreed that no CPNI obstacles are presented with respect to directory assistance, because this service “is necessary to allow use of the network.”¹⁷ The Caller ID display device is no less necessary to allow use of the Caller ID network transmission of name and/or number of the calling party. Indeed, anyone can pick up a telephone directory rather than calling directory assistance; but without a Caller ID display device, the Caller ID network service is absolutely useless.

No reasoned distinctions would dictate one CPNI-related outcome in connection with directory assistance and inside wire, yet another in connection with the Caller ID display device. Nor were any offered by the CPNI Order. Whether there are or are not such distinctions should be the subject of more careful study before applying the CPNI rules to require CPNI approval in connection with Caller ID display devices.

Temporary forbearance in this limited respect would have no adverse impact on competition in the Caller ID CPE market. As the Commission’s CPNI Order noted, “Congress specifically intended Section 222 to ensure that customers retained control over CPNI in the face of the powerful carrier incentives to use such CPNI to gain a

¹⁶Id.

¹⁷Id. at ¶74.

foothold in new markets.”¹⁸ However, that objective has no application to Caller ID display devices. SBC does not manufacture its own display devices, procuring them instead from outside, unaffiliated vendors. Thus, to the extent that the display device may be marketed more efficiently to customers, CPE vendors as a community are benefitted; to the extent that this is not the case, that community may be disserved. In either case, there is no effect upon SBC as it has no interest in the manufacture of such display devices.

Accordingly, the Commission should temporarily forbear from applying, or defer the effective date of, Rule 64.2005(b)(1) insofar as it yields different results as to Caller ID service and the associated Caller ID display device, at least until a more complete record can be developed on the respective benefits and burdens associated with such application. At least with respect to Caller ID and the associated display device, the time is now “to examine whether the public interest would be better served if carriers were able to use CPNI, within the framework of the total service approach, in order to market CPE.”¹⁹

Call Waiting:

As is apparent from the above, Call Waiting functionality is inextricably tied to the multiple other call control, adjunct-to-basic functions afforded customers, and voice mail services, and the same points made with respect to Caller ID apply to Call Waiting-

¹⁸CPNI Order, ¶37.

¹⁹Id., ¶77.

related services that require certain CPE. Specialized telephone sets, which are CPE, must be employed in order to gain maximum use of Call Waiting-related services and the many customer conveniences it can offer. Attached hereto is a succinct description, drawn from Southwestern Bell Telephone Company's business methods, of the "soft key" telephone's indispensable relationship with Call Waiting/Caller ID/voice mail-related services (i.e., Call Waiting ID and Call Waiting ID Options). (Attachment A)

For the reasons stated in connection with Caller ID and those reflected in the attached, SBC submits that the Commission should temporarily forbear from applying, or defer the effective date of, Rule 64.2005(b)(1) to the same extent with regard to the Call Waiting-related CPE.

ADSL:

SBC joins with GTE's position that the Commission should temporarily forbear from the application of its CPNI Order to the CPE uniquely associated with asynchronous digital subscriber loop services ("ADSL"). SBC agrees that ADSL modems are a functional part of the service that have "virtually no use for any purpose other than to complete the transmission path of a specific provider's ADSL service."²⁰ It also concurs with GTE's position that because ADSL CPE is within a customer's reasonable expectations regarding ADSL service, no privacy interests are affected by allowing CPNI to be used to market ADSL modems as a part of the carrier's introduction of the service to the public. These expectations also justify including ADSL modems within the local

²⁰GTE Petition, at 16.

telephone service bucket for CPNI purposes because, due to the inextricable link between the ADSL service and the CPE associated with it, customers have given implied approval of the use of CPNI to be notified of such CPE regarded as an improvement to, if no integral to, telecommunications service.²¹

ADSL is the most recent example of an evolving telecommunications technology principle: when new technology is developed and made available on the network, it is also made available via CPE. Sometimes, CPE manufacturers develop products and new technology that drive down a customer's network service costs. Network providers may also offer consolidated/compressed network bandwidth requirements or larger, more economical network service arrangements.

In either event, providers of more advanced telecommunications services like ADSL are expected by sophisticated business customers to be able to offer an integrated solution based upon a complete knowledge and use of network services subscribed to and CPE, without the need to also confuse customers by seeking CPNI approval.

Thus, SBC joins with GTE's Request in this regard, and agrees that all advanced telecommunications services (including IP/VPN) should be included in that request.

²¹Id. at 17.

V. THE COMMISSION SHOULD TEMPORARILY FOREBEAR FROM APPLYING, OR DEFER THE EFFECTIVE DATE OF, SECTION 64.2005(b)(3) OF THE RULES RELATING TO USE OF CPNI FOR “WINBACK” PURPOSES.

GTE and CTIA offer, collectively, a multitude of compelling reasons why the Commission’s CPNI Order is in error with respect to carrier “winback” efforts.²² But several other considerations suggest that, until the Commission can give complete and informed consideration to the matter of carrier winback efforts, it should temporarily forbear from applying, or defer, the effective date of Rule 64.2005(b)(3) relating to use of CPNI for carrier “winback” efforts.

First, the ability to use CPNI to market to customers who have chosen another service provider enables the original carrier to develop and implement services, features and pricing in a way which meet customer requirements and the demands of the marketplace. Inability to use CPNI cripples such efforts, resulting in customer dissatisfaction when the original carrier is prevented from using CPNI about its customers to understand their telecommunications service needs and buying behaviors. It also makes impossible meaningful attempts to understand the types of offers that would best suit various customer segments. The result is an inability to market to customers in the most efficient, cost-effective manner.

In particular cases, use of CPNI for winback efforts may result in an actual winback. But no carrier should be barred from using CPNI for this specific purpose. To

²²CPNI Order, ¶85.